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18 Attorneys for Defendant  
19 LEXAR MEDIA, INC.

20  
21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA  
23 SAN JOSE DIVISION

24 JENS ERIK SORENSEN, as Trustee of  
25 SORENSEN RESEARCH AND  
26 DEVELOPMENT TRUST,

27 Plaintiff,

28 v.

LEXAR MEDIA, INC., a Delaware corporation;  
and DOES 1 - 100,

Defendants.

Case No. C08-00095 JW RS

DECLARATION OF DAVID ASHMORE  
IN SUPPORT OF DEFENDANT LEXAR  
MEDIA'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
APPLICATION OF 35 U.S.C. § 295  
PRESUMPTION OF INFRINGEMENT

29 I, David Ashmore, declare:

30 1. I am Senior Assistant General Counsel for Micron Technology, Inc., parent  
31 corporation to its wholly-owned subsidiary, Lexar Media, Inc. ("Lexar"). I submit this  
32 declaration in support of Defendant Lexar Media's Opposition to Plaintiff's Motion for  
33 Application of 35 U.S.C. § 295 Presumption of Infringement. My understanding is that the facts  
34



1 stated herein are true and correct, and if called upon as a witness, I could competently testify to  
2 them.

3           2. On April 16, 2005, Sorensen Research and Development Trust  
4 ("Sorensen") sent Lexar a letter informing it of the '184 patent in connection with the process  
5 used by Lexar or its foreign suppliers to manufacture the LEXAR MEDIA JumpDrive 128MB  
6 ("Accused Product").

7           3. During the course of the pre-suit discussions between Lexar and Sorensen,  
8 Lexar provided Sorensen with information concerning the process used to manufacture the  
9 Accused Product.

10          4. Sorensen admitted that, if the information provided by Lexar accurately  
11 described the manufacturing process of the Accused Product, then the process used to  
12 manufacture the Accused Product would not infringe.

13          5. Sorensen indicated that an affidavit from a U.S.-based Lexar employee,  
14 using language provided by Sorensen, that the process used to make the Accused Product did not  
15 infringe the process claimed by the '184 patent, would be sufficient to overcome any presumption  
16 of infringement that Sorensen held.

17          6. Lexar offered to provide to Sorensen copies of correspondence with  
18 Lexar's suppliers regarding Lexar's non-infringement of the patent in suit, confirming that the  
19 process used by the suppliers to manufacture the Accused Product did not infringe the claimed  
20 process.

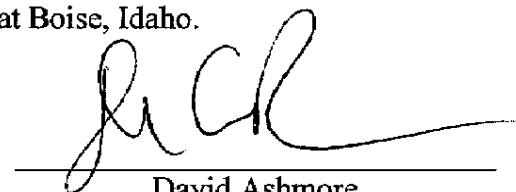
21          7. The conditions under which the correspondence was offered were that  
22 Sorensen and Sorensen's counsel would agree: (1) to keep them confidential and accessed only  
23 by Sorensen and Sorensen's counsel; (2) to never use them for any purpose other than evaluating  
24 Sorensen's infringement allegations against Lexar concerning the patent-in-suit; (3) that Lexar  
25 has not waived any privileges by sharing them; and (4) that Sorensen will never claim any waiver  
26 as a result of Lexar's sharing the correspondence with Sorensen.

27          8. Sorensen refused to agree to the conditions under which Lexar was willing  
28 to share correspondence with its suppliers.



1 I declare under penalty of perjury under the laws of the United States of America  
2 that the foregoing is true and correct.  
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4 Executed this <sup>16<sup>th</sup> day of June, 2008, at Boise, Idaho.</sup>



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David Ashmore